

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

SHAWN HOWARD WELLER,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

CV 16-60-H-DLC-JTJ

FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

The case comes before the Court on Petitioner Shawn Howard Weller's "Motion for Extension of Time." (Doc. 1.)

Weller requests an order from this Court giving him a 90-day extension in which to file his petition for a writ of habeas corpus under 28 U.S.C. § 2254. Section 2254 does not authorize federal courts to prospectively extend or toll this limitations period. Further, whether a petition is timely filed is a determination that can be made only after the actual filing of the petition. Under the general principles of the "case or controversy" requirement of Article III, Section 2, of the United States Constitution, a federal court may not issue advisory opinions. *See e.g., Princeton University v. Schmid*, 455 U.S. 100, 102 (1982) (federal courts do not "sit to decide hypothetical issues or to give advisory opinions about issues as to which there are not adverse parties before [them]"). Because Mr. Weller has not

filed his petition, no such determination can be made.

At this point, Mr. Weller's request for an extension should be denied. This matter should be dismissed without prejudice. If and when Mr. Weller files a petition, the Court will open a new case.

A certificate of appealability should be denied because reasonable jurists could not find grounds to doubt the jurisdictional ruling. *See Lambright v. Stewart*, 220 F. 3d 1022, 1026 (9th Cir. 2000).

Based on the foregoing, the undersigned enters the following:

RECOMMENDATIONS

1. Mr. Weller's Motion for Extension of Time (Doc. 1) should be DENIED and the matter DISMISSED without prejudice.
2. The Clerk of Court should be directed to enter, by separate document, a judgment of dismissal.
3. A certificate of appealability should be DENIED.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT

Mr. Weller may object to this Findings and Recommendation within 14 days.¹ 28 U.S.C. § 636(b)(1). Failure to timely file written objections may bar a de

¹ As this deadline allows a party to act within 14 days after the Findings and Recommendation is "served," Fed. R. Civ. P. 6(d) applies, and three days are added after the time would otherwise expire.

novo determination by the district judge and/or waive the right to appeal.

Mr. Weller must immediately notify the Court of any change in his mailing address by filing a “Notice of Change of Address.” Failure to do so may result in dismissal of this action without notice to him.

DATED this 18th day of July, 2016.

/s/ John Johnston
John Johnston
United States Magistrate Judge